



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
CHARLES RICOTTONE, :  
: Petitioner, :  
: :  
: -v- :  
: :  
WARDEN JANICE KILLIAN,<sup>1</sup> :  
: Respondent. :  
-----x

JED S. RAKOFF, U.S.D.J.

On February 1, 2008, the Honorable Henry Pitman, United States Magistrate Judge, issued a Report and Recommendation in the above-captioned matter recommending that this petition for habeas corpus be denied.

Petitioner has failed to file any objection to the Report and Recommendation, and, for that reason alone, has waived any right to review by this Court. See Thomas v. Arn, 474 U.S. 140, 147-48 (1985); Mario v. P & C Food Markets, Inc., 313 F.3d 758, 766 (2d Cir. 2002); Spence v. Superintendent, Great Meadow Corr. Facility, 219 F.3d 162, 174 (2d Cir. 2000). Accordingly, the Court hereby adopts the Report and Recommendation, and, for the reasons therein, dismisses the petition with prejudice. In addition, because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 25(d), Janice Killian, Warden at FCI Otisville, is automatically substituted for former Warden Frederick Menifee as the respondent in this case.

appealability will not issue. See 28 U.S.C. § 2253. Moreover, the Court certifies that any appeal from this Order would not be taken in good faith, as petitioner's claim lacks any arguable basis in law or fact, and therefore permission to proceed in forma pauperis is also denied. See 28 U.S.C. § 1915(a)(3); see also Seimon v. Emigrant Savs. Bank (In re Seimon), 421 F.3d 167, 169 (2d Cir. 2005). Clerk to enter judgment.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York  
February 21, 2008